

# HOUSE BILL 637

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By: **Prince George's County Delegation and Montgomery County Delegation**  
Introduced and read first time: February 3, 2010  
Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission – Minority Business Utilization**  
3 **Program**

4 **PG/MC 116–10**

5 FOR the purpose of prohibiting the Washington Suburban Sanitary Commission from  
6 modifying a certain minority business utilization program or adopting a new  
7 minority business utilization program unless the modification or new program  
8 is expressly approved by an act of the General Assembly; and generally relating  
9 to minority business utilization programs of the Washington Suburban Sanitary  
10 Commission.

11 BY repealing and reenacting, without amendments,  
12 Article 29 – Washington Suburban Sanitary District  
13 Section 3–109(a) through (c)  
14 Annotated Code of Maryland  
15 (2003 Replacement Volume and 2009 Supplement)

16 BY adding to  
17 Article 29 – Washington Suburban Sanitary District  
18 Section 3–109(c–1)  
19 Annotated Code of Maryland  
20 (2003 Replacement Volume and 2009 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article 29 – Washington Suburban Sanitary District**

24 3–109.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 (a) (1) In this section the following words have the meanings indicated.

2 (2) “Director” means the Director of the Office of Small, Local, and  
3 Minority Business Enterprise established under subsection (b)(2) of this section.

4 (3) “Minority business enterprise” means any legal entity that is  
5 organized to engage in commercial transactions and at least 51% owned and controlled  
6 by one or more individuals who are members of a group that is:

7 (i) Disadvantaged socially or economically by the effects of past  
8 discrimination, including discrimination as to certification; and

9 (ii) Identified by a study conducted in accordance with this  
10 section or a similar study previously conducted.

11 (4) “Office” means the Office of Small, Local, and Minority Business  
12 Enterprise established under subsection (b)(2) of this section.

13 (b) (1) By resolution and by adopting regulations, the WSSC shall  
14 establish a minority business utilization program to facilitate the participation of  
15 responsible certified minority business enterprises in contracts awarded by the WSSC  
16 for goods and services not covered by § 3–102 of this subtitle if:

17 (i) The WSSC determines that minority business enterprises  
18 are underrepresented in the award of these contracts due to the effects of past  
19 discrimination; and

20 (ii) The WSSC determines that such a program is necessary to  
21 remedy the effects of past discrimination against minority business enterprises in  
22 contracting with the WSSC.

23 (2) (i) There is an Office of Small, Local, and Minority Business  
24 Enterprise in the WSSC.

25 (ii) The Office shall administer the programs the WSSC is  
26 required to establish under paragraph (1) of this subsection and §§ 3–102(f) and 3–110  
27 of this subtitle.

28 (iii) There is a Director who shall be in charge of the Office.

29 (c) The regulations that establish the program under subsection (b) of this  
30 section shall include provisions that:

31 (1) Recognize the certification of minority business enterprises by the  
32 State certification agency designated under § 14–303(b) of the State Finance and  
33 Procurement Article;

1           (2) Recognize any other certification program that in the judgment of  
2 the WSSC substantially duplicates the requirements of the State certification agency;

3           (3) Provide for minority business participation through  
4 subcontracting;

5           (4) Except as provided in item (5) of this subsection, provide for a  
6 system of granting a preference of up to the lesser of 5% or \$50,000 to minority  
7 business enterprises in evaluating bids and proposals;

8           (5) Subject to the provisions of subsection (e) of this section, establish  
9 a sheltered market program in which bidding on procurement contracts designated by  
10 the WSSC as appropriate is restricted to certified minority business enterprises;

11           (6) Provide for the graduation of a minority business enterprise from  
12 the program if the WSSC determines that the minority business enterprise no longer  
13 requires the assistance or benefits offered by the program;

14           (7) Require the solicitation document accompanying each solicitation  
15 to set forth the regulations of the minority business utilization program;

16           (8) Require the geographic location and the principal place of business  
17 of the minority business enterprise to be a consideration for participation in this  
18 program, including requiring Montgomery County businesses and Prince George's  
19 County businesses to each have a targeted percentage of at least 40% of any contracts;

20           (9) Authorize the WSSC to refuse to recognize the certification of any  
21 business found to be in violation of the purposes of the program and to permanently  
22 bar any active principals of a violating business from future participation in the  
23 program;

24           (10) Permit the waiver of all or part of the provisions of the program for  
25 a specific contract if the WSSC determines that the application of the program to the  
26 contract conflicts with the WSSC's overall objectives and responsibilities, and require  
27 the WSSC to report annually to the Montgomery County and Prince George's County  
28 House and Senate Delegations on those waivers;

29           (11) Require at the time of submission each bid or proposal that is  
30 based on a solicitation with an expected degree of minority business enterprise  
31 participation to include proof of a certified minority business enterprise commitment  
32 by stating:

33                   (i) The potential subcontract opportunities available in the  
34 prime procurement contract; and

35                   (ii) The number of minority business enterprises that have  
36 certified, under the penalties of perjury, that the minority business enterprise has

1 entered into an agreement with the bidder to provide goods or services under specific  
2 terms outlined in the certification before the bid is accepted;

3 (12) Require each general contractor to submit monthly reports of the  
4 number of minority business enterprises employed by the general contractor to the  
5 WSSC;

6 (13) Require each general contractor to provide prompt notification to  
7 the WSSC if a contract with a minority business enterprise is terminated; and

8 (14) Require each general contractor to maintain a participation level  
9 from minority business enterprises that is consistent with the participation level  
10 referenced under item (11)(ii) of this subsection or provide justification for the general  
11 contractor's inability to maintain that participation level.

12 **(C-1) THE WSSC MAY NOT MODIFY AN EXISTING MINORITY BUSINESS**  
13 **UTILIZATION PROGRAM OR ADOPT A NEW MINORITY BUSINESS UTILIZATION**  
14 **PROGRAM UNDER THIS SECTION UNLESS THE MODIFICATION OR NEW PROGRAM**  
15 **IS EXPRESSLY APPROVED BY AN ACT OF THE GENERAL ASSEMBLY.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2010.